6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2009-0785; FRL-9691-7]

Approval and Promulgation of Implementation Plans; South Carolina; Regional Haze State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval of a revision to the South Carolina State Implementation Plan (SIP) submitted by the State of South Carolina through the South Carolina Department of Health and Environmental Control (SC DHEC) on December 17, 2007. South Carolina's December 17, 2007, SIP revision addresses regional haze for the first implementation period. Specifically, this SIP revision addresses the requirements of the Clean Air Act (CAA or Act) and EPA's rules that require states to prevent any future and remedy any existing anthropogenic impairment of visibility in mandatory Class I areas (national parks and wilderness areas) caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the "regional haze program"). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. EPA is finalizing a limited approval of South Carolina's December 17, 2007, SIP revision to implement the regional haze requirements for South Carolina on the basis that this SIP revision, as a whole, strengthens the South Carolina SIP. Additionally, EPA is rescinding the Federal regulations previously approved into the South Carolina SIP on July 12, 1985, and

November 24, 1987, and is approving the provisions in South Carolina's December 17, 2007, SIP submittal to meet the monitoring and long-term strategy (LTS) requirements for reasonably attributable visibility impairment (RAVI). In a separate action published on June 7, 2012, EPA finalized a limited disapproval of this same SIP revision because of the deficiencies in the State's regional haze SIP revision arising from the remand by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) to EPA of the Clean Air Interstate Rule (CAIR).

EFFECTIVE DATE: This rule will be effective [insert 30 days from the date of publication in the Federal Register], except for the amendment to §52.2132, which is effective on August 7, 2012.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2009-0785. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia

30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for further information. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michele Notarianni, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Michele Notarianni can be reached at telephone number (404) 562-9031 and by electronic mail at notarianni.michele@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. What is the Background for This Final Action?

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particles (e.g., sulfates,

nitrates, organic carbon, elemental carbon, and soil dust), and their precursors (e.g., sulfur dioxide (SO_2), nitrogen oxides (NOx), and in some cases, ammonia and volatile organic compounds. Fine particle precursors react in the atmosphere to form fine particulate matter ($PM_{2.5}$) which impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. $PM_{2.5}$ can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the "prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I areas which impairment results from manmade air pollution." On December 2, 1980, EPA promulgated regulations to address visibility impairment in Class I areas that is "reasonably attributable" to a single source or small group of sources, i.e., "reasonably attributable visibility impairment." *See* 45 FR 80084. These regulations represented the first phase in addressing visibility impairment. EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling, and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

Congress added section 169B to the CAA in 1990 to address regional haze issues. EPA promulgated a rule to address regional haze on July 1, 1999 (64 FR 35714), the Regional Haze Rule (RHR). The RHR revised the existing visibility regulations to integrate into the regulation

provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in EPA's visibility protection regulations at 40 CFR 51.300 through .309. The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia, and the Virgin Islands. 40 CFR 51.308(b) requires states to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007.

On December 17, 2007, SC DHEC submitted a revision to South Carolina's SIP to address regional haze in the State's and other states' Class I areas. On February 28, 2012, EPA published an action proposing a limited approval of South Carolina's December 17, 2007, SIP revision to address the first implementation period for regional haze.[1] *See* 77 FR 11894. EPA proposed a limited approval of South Carolina's December 17, 2007, SIP revision to implement the regional haze requirements for South Carolina on the basis that this revision, as a whole, strengthens the South Carolina SIP. See section II of this rulemaking for a summary of the comments received on the proposed actions and EPA's responses to these comments. Detailed background information and EPA's rationale for the proposed action is provided in EPA's February 28, 2012, proposed rulemaking.

Following the remand of CAIR, EPA issued a new rule in 2011 to address the interstate transport of NOx and SO_2 in the eastern United States. *See* 76 FR 48208 (August 8, 2011) ("the

[1] In a separate action, published on June 7, 2012 (77 FR 33642), EPA finalized a limited disapproval of the South Carolina regional haze SIP because of deficiencies in the State's regional haze SIP submittal arising from the State's reliance on CAIR to meet certain regional haze requirements. Also, in that June 7, 2012, action, EPA finalized a Federal Implementation Plan (FIP) for South Carolina to address the deficiencies that resulted from the State's reliance on CAIR for their regional haze SIP.

Transport Rule," also known as the Cross-State Air Pollution Rule (CSAPR)). On December 30, 2011, EPA proposed to find that the trading programs in the Transport Rule would achieve greater reasonable progress towards the national goal of achieving natural visibility conditions than would best available retrofit technology (BART) in the states in which the Transport Rule applies (including South Carolina). *See* 76 FR 82219. Based on this proposed finding, EPA also proposed to revise the RHR to allow states to substitute participation in the trading programs under the Transport Rule for source-specific BART. EPA finalized this finding and RHR revision on June 7, 2012 (77 FR 33642).

Also on December 30, 2011, the D.C. Circuit stayed the Transport Rule (including the provisions that would have sunset CAIR and the CAIR FIPs) and instructed the EPA to continue to administer CAIR pending the outcome of the court's decision on the petitions for review challenging the Transport Rule. *EME Homer City* v. *EPA*, No. 11-1302.

II. What is EPA's Response to Comments Received on This Action?

EPA received one set of comments on the February 28, 2012, rulemaking proposing a limited approval of South Carolina's December 17, 2007, regional haze SIP revision. Specifically, the comments were received from the Southern Environmental Law Center on behalf of the South Carolina Coastal Conservation League. A full set of the comments provided by the aforementioned entity (hereinafter referred to as "the Commenter") is provided in the

docket for today's final action. A summary of the comments and EPA's responses are provided below.

Comment 1: The Commenter incorporates by reference comments submitted to EPA on February 28, 2012, by the "Sierra Club, Earthjustice, and other organizations" regarding the Agency's December 30, 2011, proposed rulemaking to find that the Transport Rule is "better than BART" and to use the Transport Rule as an alternative to BART for South Carolina and other states subject to the Transport Rule. *See* 76 FR 82219. The Commenter also restates several of these comments, including the following: the Transport Rule does not comply with EPA's criteria for an alternative to BART; the State cannot rely on the proposed "better than BART" rulemaking given the D.C. Circuit's action staying implementation of the Transport Rule; concluding that the Transport Rule achieves greater reasonable progress toward national visibility conditions than BART, without regard to defined reasonable progress goals (RPGs), is arbitrary and contrary to the CAA; EPA has not accounted for the differences in averaging time under BART, the Transport Rule, and in measuring visibility impacts; EPA's modeling assumed nitrate levels that are often lower than real-world conditions; in some instances, EPA relied on a single monitor to assess visibility conditions in multiple Class I areas; EPA uses a simple arithmetic mean to conclude that visibility improvements will be greater under the Transport Rule than BART; and EPA's proposed "Better than BART" determination relies on a 2014 base case that does not account for permanent emissions reductions at non-BART eligible sources.

Response 1: These comments are beyond the scope of this rulemaking. In today's action, EPA

is finalizing a limited approval of South Carolina's regional haze SIP. EPA did not propose to find that participation in the Transport Rule is an alternative to BART in this action nor did EPA reopen discussions on the CAIR provisions as they relate to BART.[2] As noted above, EPA proposed to find that the Transport Rule is "Better than BART" and to use the Transport Rule as an alternative to BART for South Carolina in a separate action on December 30, 2011, and the Commenter is merely reiterating and incorporating comments submitted on that separate action. EPA addressed these February 28, 2012, comments concerning the Transport Rule as a BART alternative in a final action that was published on June 7, 2012, and has determined that they do not affect the Agency's ability to finalize a limited approval of South Carolina's regional haze SIP. EPA's responses to these comments can be found in Docket ID No. EPA-HQ-OAR-2011-0729 at www.regulations.gov.

Comment 2: The Commenter asserts that the proposed limited approval violates the CAA and RHR because a regional haze plan's BART requirements and long-term strategy to achieve reasonable progress cannot be evaluated in isolation from one another. The Commenter supports its position by repeating statements made in the aforementioned February 28, 2012, comments on the Agency's proposed December 30, 2011, rulemaking to find that the Transport Rule is "better than BART" and to use the Transport Rule as an alternative to BART for South Carolina

[2] In a final action published on July 6, 2005, EPA addressed similar comments related to CAIR and determined that CAIR makes greater reasonable progress than BART for certain EGUs and pollutants (70 FR 39138-39143). EPA did not reopen comment on that issue through this rulemaking.

and other states subject to the Transport Rule. For example, the Commenter states that "[b]ecause BART is a critical component to achieving reasonable progress, neither the states nor EPA are authorized to exempt sources from the RHR's BART requirements without considering how doing so will affect the overarching reasonable progress mandate.… Concluding that CSAPR achieves greater reasonable progress toward achieving natural visibility conditions than BART, without regard to defined reasonable progress goals, is arbitrary and contrary to law under the Clean Air Act and the RHR."

Response 2: As discussed in the response to Comment 1, today's action does not address reliance on CAIR or CSAPR to satisfy BART requirements. Comments related to the approvability of CAIR or CSAPR for the South Carolina regional haze SIP are therefore beyond the scope of this rulemaking and were addressed by EPA in a separate action published on June 7, 2012 (77 FR 33642). EPA addressed the Commenter's repeated statements regarding the interrelatedness of BART, the LTS, and RPGs in that final rulemaking action and those responses support this limited approval action.[3]

Comment 3: The Commenter asserts that EPA does not have the authority under the CAA to issue a limited approval of South Carolina's regional haze SIP. The Commenter contends that

[3] *See* EPA, Response to Comments Document, Regional Haze: Revisions to Provisions Governing Alternatives to Source-Specific Best Available Retrofit Technology (BART) Determinations, Limited SIP Disapprovals, and Federal Implementation Plans (76 FR 82219; December 30, 2011), Docket Number EPA-HQ-OAR-2011-0729 (May 30, 2012), pages 49-51 (noting that EPA "disagree[s] with comments that we cannot evaluate the BART requirements in isolation from the reasonable progress requirements. We have on several occasions undertaken evaluations of a state's BART determination or promulgated a FIP separately from our evaluation of whether the SIP as a whole will ensure reasonable progress.").

section 110(k) of the Act only allows EPA to fully approve, partially approve and partially disapprove, conditionally approve, or fully disapprove a SIP.

Response 3: As discussed in the September 7, 1992, EPA memorandum cited in the notice of proposed rulemaking,[4] although section 110(k) of the CAA may not expressly provide authority for limited approvals, the plain language of section 301(a) does provide "gap-filling" authority authorizing the Agency to "prescribe such regulations as are necessary to carry out" EPA's CAA functions. EPA may rely on section 301(a) in conjunction with the Agency's SIP approval authority in section 110(k)(3) to issue limited approvals where it has determined that a submittal strengthens a given state's implementation plan, and that the provisions meeting the applicable requirements of the Act are not separable from the provisions that do not meet the Act's requirements. EPA has adopted the limited approval approach numerous times in SIP actions across the nation over the last 20 years. A limited approval action is appropriate here because EPA has determined that South Carolina's SIP revision addressing regional haze, as a whole, strengthens the State's implementation plan and because the provisions in the SIP revision are not separable.

The Commenter states that EPA's action "conflicts with the plain language of the [CAA]" and cites several Federal appellate court decisions to support its contention that section

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[4] *Processing of State Implementation Plan (SIP) Revisions,* EPA Memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, to Air Division Directors, EPA Regional Offices I-X, September 7, 1992, ("1992 Calcagni Memorandum") located at *http://www.epa.gov/ttn/caaa/t1/memoranda/siproc.pdf*.

110(k) of the Act limits EPA to a full approval, "a conditional approval, a partial approval and disapproval, or a full disapproval." However, adopting the Commenter's position would ignore section 301 and violate the " 'fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme'… A court must therefore interpret the statute 'as a symmetrical and coherent regulatory scheme,'… and 'fit, if possible, all parts into an harmonious whole.' " *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (quoting *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803, 809 (1989), *Gustafson v. Alloyd Co.*, 513 U.S. 561, 569 (1995), and *FTC v. Mandel Brothers, Inc.*, 359 U.S. 385, 389 (1959)). Furthermore, the cases cited by the Commenter did not involve challenges to a limited approval approach, and one of the cases, *Abramowitz v. EPA*, 832 F.2d 1071 (9th Cir. 1988), predates the 1990 CAA amendments enacting section 110(k).

Comment 4: The Commenter contends that it was inappropriate for the State to "rel[y] on CAIR (and now CSAPR)" in determining RPGs and that due, in part, to this reliance, the State "failed to evaluate numerous sources that contribute significantly to visibility impairment at the State's Class I areas" and that it "cast doubts on the validity of DHEC's modeling." The Commenter therefore believes that EPA should not approve the SIP unless the State considers additional reasonable progress from the 10 electric generating units (EGUs) excluded from the reasonable progress analyses and the State conducts further analyses in setting its RPGs (or EPA "ensure[s] that DHEC follows through on its commitment to re-evaluate its ability to meet its RPGs in the 5-year progress review, pursuant to 40 CFR. 52.308(g)"). The Commenter also

states that "even when the uniform rate of progress [URP] is predicted to be met, the state still has an obligation 'to go beyond the URP analysis in establishing RPGs… to determine whether additional progress would be reasonable based on the statutory factors.'"

Response 4: The State took into account emissions reductions expected from CAIR to determine the 2018 RPGs for its Class I area, and this approach was fully consistent with EPA guidance at the time of SIP development. In the regional haze program, uncertainties associated with modeled emissions projections into the future are addressed through the requirement under the RHR to submit periodic progress reports in the form of a SIP revision. Specifically, 40 CFR 51.308(g) requires each state to submit a report every five years evaluating progress toward the RPGs for each mandatory Class I area located in the state and for each Class I area outside the state that may be affected by emissions from the state. Since this 5-year progress re-evaluation is a mandatory requirement, it is unnecessary for EPA to take additional measures to "ensure" that the State meets its reporting obligation.

Regarding the need to go beyond the URP analysis when establishing RPGs, EPA affirmed in the RHR that the URP is not a "presumptive target;" rather, it is an analytical requirement for setting RPGs. *See* 64 FR 35731 and 35732, July 1, 1999. In determining RPGs for the South Carolina Class I area, the State identified sources through its area of influence methodology for reasonable progress control evaluation and described those evaluations in its SIP. For its EGUs subject to CAIR, SC DHEC reviewed the statutory factors (i.e., the costs of

compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources) as evaluated by EPA for CAIR.

Comment 5: The Commenter contends that the emissions reductions from some of the significant CAA emissions control programs and consent decrees identified in the 2018 emissions inventory are speculative and uncertain. The Commenter therefore believes that EPA should require South Carolina to address any discrepancies, prior to approval of the State's regional haze SIP.

Response 5: The technical information provided in the record demonstrates that the emissions inventory in the SIP adequately reflects projected 2018 conditions and that the LTS meets the requirements of the RHR and is approvable. South Carolina's 2018 projections are based on the State's technical analysis of the anticipated emissions rates and level of activity for EGUs, other point sources, nonpoint sources, on-road sources, and off-road sources based on their emissions in the 2002 base year, considering growth and additional emissions controls to be in place and federally enforceable by 2018. The emissions inventory used in the regional haze technical analyses was developed by the Visibility Improvement State and Tribal Association of the Southeast (VISTAS) with assistance from South Carolina. The 2018 emissions inventory was developed by projecting 2002 emissions (the latest region-wide inventory available at the time the submittal was being developed) and applying reductions expected from Federal and state regulations affecting the emissions of VOC and the visibility impairing pollutants NOx,

particulate matter (PM), and SO_2. To minimize the differences between the 2018 projected emissions used in the South Carolina regional haze submittal and what actually occurs in 2018, the RHR requires that the 5-year review address any expected significant differences due to changed circumstances from the initial 2018 projected emissions, provide updated expectations regarding emissions for the implementation period, and evaluate the impact of these differences on RPGs. It is expected that individual projections within a statewide inventory will vary from actual emissions over a 16-year period. For example, some facilities shut down whereas others expand operations. Furthermore, economic projections and population changes used to estimate growth often differ from actual events; new rules are modified, changing their expected effectiveness; and methodologies to estimate emissions improve, modifying emissions estimates. The 5-year review is a mechanism to assure that these expected differences from projected emissions are considered and their impact on the 2018 RPGs is evaluated. EPA finds that these inventories provide a reasonable assessment of future emissions from South Carolina sources.

Comment 6: The Commenter states that in exempting EGUs from a BART analysis "on the basis that their contribution to visibility impairment modeled less than 0.5 deciview, it does not appear that DHEC considered the cumulative impact of those sources that did not individually exceed the 0.5 dv threshold, but collectively may cause or contribute to impairment." The Commenter cites to EPA guidelines in 70 FR 39161 and39162, July 6, 2005, to support its belief that this exemption threshold "applies when all visibility impairing pollutants are modeled

together, not one pollutant at a time, as used by DHEC." According to the Commenter, when considering the modeling impacts from coarse particulate matter (PM_{10}) alone for the exempted sources, their combined "contribution to visibility impairment greatly exceeds the 0.5 dv contribution threshold," calling into question the "validity of DHEC's exemptions of multiple sources from BART."

Response 6: As discussed in the proposal, (*see* section IV.C.6.B.2, February 28, 2012, 77 FR 11908), South Carolina adequately justified its contribution threshold of 0.5 deciview. While states have the discretion to set an appropriate contribution threshold considering the number of emissions sources affecting the Class I area at issue and the magnitude of the individual sources' impacts, the states' analysis must be consistent with the CAA, the RHR, and EPA's *Guidelines for BART Determinations Under the Regional Haze Rule* at Appendix Y to 40 CFR Part 51 (BART Guidelines). Consistent with the regulations and EPA's guidance, "the contribution threshold should be used to determine whether an individual source is reasonably anticipated to contribute to visibility impairment. You should not aggregate the visibility effects of multiple sources and compare their collective effects against your contribution threshold because this would inappropriately create a 'contribution to contribution' test." *See also* 70 FR 39121, NOTE 34, July 6, 2005. South Carolina's analysis in the regional haze SIP revision was consistent with EPA's regulations and guidance on the issue of cumulative analyses.

Regarding modeling in South Carolina's submittal that uses PM only for its BART-eligible EGUs, EPA previously determined that this approach is appropriate for EGUs where the State proposed to rely on CAIR to satisfy the BART requirements for SO_2 and NOx.[5]

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[5] *Regional Haze Regulations and Guidelines for Best Available Retrofit Technology (BART) Determinations*, EPA

Comment 7: The Commenter believes that the PM BART determinations for South Carolina Electric & Gas' ("SCE&G's") Wateree and Williams stations are flawed because "it appears that DHEC did not evaluate BART for all particulate matter. BART requires an evaluation of technology for filterable PM10 and PM2.5 as well as condensable particulate matter…. DHEC's BART determinations …appear to have been based [on] cost analyses that were conducted for condensable PM10. The finer fractions of particulate matter (PM2.5) make a relatively larger contribution to visibility impacts. This has an impact in estimating emission reductions and selecting the most effective controls. EPA must require DHEC to conduct new BART determinations that correct this flaw."

Response 7: It is unclear from the comment what PM control strategies were allegedly ignored by the State in the BART analyses for these two stations. Each of the control options evaluated for these facilities in South Carolina's regional haze SIP submittal considered the contribution of total PM_{10} and $PM_{2.5}$ (as a subset of the total PM_{10}) as well as condensables (primarily sulfuric acid mist) (see Appendix H.6 of South Carolina's December 17, 2007, SIP submittal). The installed controls on both facilities are effective at reducing filterable and condensable particulates, and as a result, the State determined that additional reductions were not cost effective. The Commenter did not identify any alternative control technology for fine particles not considered by the State that could affect the BART determination.

Memorandum from Joseph Paisie, Group Leader, Geographic Strategies Group, OAQPS, to Kay Prince, Branch

Comment 8: According to the Commenter, it was "inappropriate and arbitrary for DHEC to use the CAIR cost per ton of SO_2 removed as the cost threshold for evaluating reasonable progress controls. The only rationale DHEC offered in support of this decision was that DHEC 'believes it is not equitable to require non-EGUs to bear a greater economic burden than EGUs for a given control strategy'…. EPA, likewise, acknowledges that 'the use of a specific threshold for assessing costs means that a state may not fully consider available emissions reduction measures above its threshold that would result in meaningful visibility improvement,' but proposes to approve South Carolina's reasonable progress analysis anyway…EPA should re-evaluate this decision in its final action on this proposal, especially in light of the fact that DHEC determined that no additional reasonable controls were required at any of the sources affecting visibility in South Carolina's Class I area."

Response 8: As noted in EPA's Reasonable Progress Guidance[6] and discussed further in EPA's February 28, 2012, proposal action on the South Carolina regional haze SIP submittal (77 FR 11906), the states have wide latitude to determine appropriate additional control requirements for ensuring reasonable progress, and there are many ways for a state to approach identification of additional reasonable measures. States must consider, at a minimum, the four statutory factors in determining reasonable progress, but states have flexibility in how to take these factors into consideration.

After reviewing DHEC's methodology and analyses and the record prepared by DHEC,

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Chief, EPA Region 4, July 19, 2006, located at: http://www.epa.gov/visibility/pdfs/memo_2006_07_19.pdf.

[6] *Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program,*, July 1, 2007, memorandum from William L.Wehrum, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators,

EPA finds South Carolina's conclusion that no further controls are necessary at this time acceptable and that the State adequately evaluated the control technologies available at the time of its analysis and applicable to this type of facility and consistently applied its criteria for reasonable compliance costs. See 77 FR 11906, February 28, 2012. The State also included appropriate documentation in its SIP of the technical analysis it used to assess the need for and implementation of reasonable progress controls. Although the use of a specific threshold for assessing costs means that a state may not fully consider available emissions reduction measures above its threshold that would result in meaningful visibility improvement, EPA believes that the South Carolina SIP ensures reasonable progress.

In approving South Carolina's reasonable progress analysis, EPA is placing great weight on the fact that there is no indication in the SIP revision that South Carolina, as a result of using a specific cost effectiveness threshold, rejected potential reasonable progress measures that would have had a meaningful impact on visibility in its Class I areas.

III. What is the Effect of This Final Action?

Under CAA sections 301(a) and 110(k)(6) and EPA's long-standing guidance, a limited approval results in approval of the entire SIP revision, even of those parts that are deficient and prevent EPA from granting a full approval of the SIP revision.[7] Today, EPA is finalizing a

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EPA Regions 1–10 ("EPA's Reasonable Progress Guidance"), page 4-2.
[7] 1992 Calcagni Memorandum.

limited approval of South Carolina's December 17, 2007, regional haze SIP revision. This limited approval results in approval of South Carolina's entire regional haze submission and all its elements. EPA is taking this approach because South Carolina's SIP will be stronger and more protective of the environment with the implementation of those measures by the State and having Federal approval and enforceability than it would without those measures being included in its SIP.

IV. Final Action

EPA is finalizing a limited approval of a revision to the South Carolina SIP submitted by the State of South Carolina on December 17, 2007, as meeting some of the applicable regional haze requirements as set forth in sections 169A and 169B of the CAA and in 40 CFR 51.300–308. Also in this action, EPA is rescinding the Federal regulations in 40 CFR 52.2132 that were approved into the South Carolina SIP on July 12, 1985, and November 24, 1987, and is approving the provisions in South Carolina's December 17, 2007, SIP submittal to meet the monitoring and LTS requirements for RAVI at 40 CFR 51.305 and 40 CFR 51.306, respectively.

V. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., OMB must approve all "collections of information" by EPA. The Act defines "collection of information" as a requirement for answers to…identical reporting or recordkeeping requirements imposed on ten or more persons…44 U.S.C. 3502(3)(A). The Paperwork Reduction Act does not apply to this action.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union*

Electric Co., v. *EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act (UMRA)

Under sections 202 of the UMRA of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that today's action does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism

implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has Federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination with Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, EPA complies with this Executive Order through the process of tribal consultation. With respect to today's action, EPA has offered the Catawba Indian Nation two opportunities to consult.[8] First, in an e-mail dated October 21, 2010, EPA extended the Catawba Indian Nation an opportunity to consult, however, the Tribe declined to consult with EPA at that time. Due to the passage of time between the initial offer of consultation and today's proposed action, EPA provided the Catawba Indian Nation a second opportunity to consult on the South Carolina Regional Haze SIP revision on February 1, 2012. In an email dated February 8, 2012, the Catawba Indian Nation stated that no consultation on this pending action was needed by the Tribe. Further, EPA has no information to suggest that today's action will impose substantial direct costs on tribal governments or preempt tribal law.

G. Executive Order 13045, Protection of Children from Environmental Health Risks

[8] The Catawba Indian Nation Reservation is located within the South Carolina. Generally, SIPs do not apply in Indian country throughout the United States, however, for purposes of the Catawba Indian Nation Reservation in Rock Hill, the South Carolina SIP does apply within the Reservation pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27-16-120 (providing that "all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities.")

and Safety Risks

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

H. Executive Order 13211, Actions that Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12 of the NTTAA of 1995 requires Federal agencies to evaluate existing

technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

K. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be

filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

AUTHORITY: 42 U.S.C. 7401 *et seq*.

Dated: June 13, 2012

A. Stanley Meiburg

Acting Regional Administrator,

Region 4.

Therefore, 40 CFR part 52 is amended as follows:

PART 52--[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

2. Section 52.2120 (e) is amended by adding an entry for "Regional Haze Plan" at the end of the table to read as follows:

§52.2120 Identification of plan.

* * * * *

(e) * * *

EPA-approved South Carolina non-regulatory provisions

Provision	State effective date	EPA approval date	Explanation
**	**	**	*
Regional Haze Plan	12/17/2007	[Insert date of publication in Federal Register] [Insert citation of publication]	

3. Section 52.2132 is amended by removing and reserving paragraph (a) to read as follows:

§ 52.2132 Visibility protection.

(a) [Reserved]

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[FR Doc. 2012-15465 Filed 06/27/2012 at 8:45 am; Publication Date: 06/28/2012]